

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
Wheeling

DAVID ANTOINE LUSTER,

Petitioner,

v.

CIVIL ACTION NO. 5:23-CV-29  
Judge Bailey

R. BROWN, Warden,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

The above referenced case is before this Court upon the magistrate judge's report and recommendation ("R&R") that petitioner's petition [Doc. 1] be denied and dismissed without prejudice. [Doc. 6].

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. **Thomas v. Arn**, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. **United States v. Schronce**, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984). Petitioner timely filed his objections [Doc. 8] on May 8, 2023. Accordingly, this Court will review those portions of the R&R to which petitioner objected under a *de novo* review. The remainder of the R&R will be reviewed for clear error.

Here, the magistrate judge bases his recommendation for dismissal upon the correct conclusion that petitioner is attempting to raise the identical issue he previously asserted in Civil Action No. 1:21-CV-84 before this very Court. See [Doc. 6 at 5]. As such, the magistrate judge correctly found that the petition in this case is a successive petition seeking to relitigate a previously addressed claim therefore warranting dismissal. [Id.].

In his objections, petitioner notes that contrary to the R&R's introduction, he is not petitioning this Court concerning an award of time credits. [Doc. 8 at 1]. Based on this Court's review, it appears that the sentence contained in the R&R's introduction referencing time credits constitutes a mere scrivener's error, the inclusion of which does nothing to alter the R&R's correct analysis that the successive petition in this case should be dismissed.

As to the remaining objections, "[w]hen a party does make objections, but these objections are so general or conclusory that they fail to direct the district court to any specific error by the magistrate judge, *de novo* review is unnecessary." **Green v. Rubenstein**, 644 F.Supp.3d 723, 730 (S.D. W.Va. 2009) (citing **Orpiano v. Johnson**, 687 F.2d 44, 47 (4th Cir. 1982)). "When only a general objection is made to a portion of a magistrate judge's report-recommendation, the Court subjects that portion of the report-recommendation to only a clear error review." **Williams v. New York State Div. of Parole**, 2012 WL 2873569, at \*2 (N.D.N.Y. July 12, 2012).

A party waives any objection to an R&R that lacks adequate specificity. See **Mario v. P & C Food Markets, Inc.**, 313 F.3d 758, 766 (2d Cir. 2002) (finding that a party's objections to the magistrate judge's R&R were not specific enough to preserve the claim

for review). Bare statements “devoid of any reference to specific findings or recommendation . . . and unsupported by legal authority, [are] not sufficient.” *Mario*, 313 F.3d at 766. Pursuant to the Federal Rules of Civil Procedure and this Court’s Local Rules, “referring the court to previously filed papers or arguments does not constitute an adequate objection.” *Id.*; see also Fed. R. Civ. P. 72(b); LR PL P 12.

Here, the remainder of petitioner’s objections simply reraise arguments previously asserted in his petition, and in the prior petition which has already been dismissed by this Court. Accordingly, petitioner’s objections do not cause this Court to alter the sound reasoning provided by the magistrate judge in the R&R.

#### **CONCLUSION**

For these reasons, petitioner’s objections [**Doc. 8**] are **OVERRULED**, and the R&R [**Doc. 6**] is **ADOPTED**. As such, petitioner’s petition [**Doc. 1**] is **DENIED** and **DISMISSED**, and the Clerk is directed to **STRIKE** this matter from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to forward a copy of this Order to all counsel of record and to mail a copy to petitioner.

**DATED:** May 9, 2023.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE